

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 04-3766

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United States of America,

Appellee,

v.

Ricardo Escatel-Chavez, also known  
as Miguel Rodriguez,

Appellant.

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Appeal from the United States  
District Court for the  
District of South Dakota.

[UNPUBLISHED]

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Submitted: September 23, 2005

Filed: September 30, 2005

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Before MELLOY, MAGILL, and GRUENDER, Circuit Judges.

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PER CURIAM.

Ricardo Escatel-Chavez (Escatel) pleaded guilty to illegally reentering the United States after having been deported, in violation of 8 U.S.C. § 1326(a). The district court<sup>1</sup> explicitly stated that the Sentencing Guidelines were advisory only, found Escatel was subject to a 16-level enhancement based on a prior conviction, and determined a Guidelines imprisonment range of 57-71 months. The court sentenced

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<sup>1</sup>The Honorable Richard H. Battey, United States District Judge for the District of South Dakota.

Escatel to 60 months in prison and 3 years supervised release, after considering the factors listed in 18 U.S.C. § 3553(a) and concluding that his criminal history and the facts in this case warranted such a sentence.

On appeal, counsel initially moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967); counsel now moves to withdraw that motion, and asks to continue this appeal as a non-Anders appeal or, alternatively, for remand in light of United States v. Booker, 125 S. Ct. 738 (2005).

We grant counsel's motion to withdraw her initial motion to withdraw, but otherwise deny her motion because any possible Booker argument fails. The record reveals that the district court properly calculated a sentencing range under advisory Guidelines and considered the sentencing factors in section 3553(a), and we conclude the sentence is not unreasonable. See Booker, 125 S. Ct. at 756-57 (Guidelines are only advisory); United States v. Pirani, 406 F.3d 543, 551 (8th Cir. 2005) (en banc) (holding Booker error is avoided when district court calculates proper Guidelines sentencing range, treats Guidelines as advisory, and imposes reasonable sentence), petition for cert. filed, (U.S. July 27, 2005) (No. 05-5547).

Accordingly, we affirm the district court's judgment.

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